

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANTHONY BOSWORTH,

Defendant.

CASE NO.: PO-07-4002-JPH
CITATION NOS.: 1254876 & 1254877

MEMORANDUM DECISION AND ORDER

On January 18, 2008, this court conducted a bench trial regarding Defendant Anthony Bosworth's three alleged traffic violations: Speeding, Expired Registration and Failure to Obey. Collette Leland, a legal intern for the Office of the United States Attorney, appeared for the government. Defendant was present and represented by Kraig Gardner. Sergeant Philip Klosterman appeared and testified on behalf of the government. Defendant testified on his own behalf.

Background

On April 4, 2007, at approximately 5:53 a.m., Sergeant Phillip Klosterman ("Klosterman") observed a vehicle driven by an individual, later identified as the Defendant, turn northbound onto Evergreen

1 State Drive from eastbound Cold Creek Road. Officer Klosterman was on
2 duty and driving a black, unmarked patrol vehicle. Officer Klosterman
3 was parked off the traveled portion of the road. As the vehicle
4 approached Officer Klosterman, he observed it was traveling at a rate
5 of speed above the posted speed limit. A radar unit operated by
6 Officer Klosterman revealed the vehicle was traveling at a speed of
7 thirty-five miles per hour. The posted speed for that portion of
8 Evergreen State Drive is twenty-five miles per hour. It was dark at
9 this time of day, but beginning to become dawn. Traffic on the road
10 was light.
11

12 Officer Klosterman pulled behind the vehicle and activated his
13 patrol vehicle emergency lights as the vehicle continued along and
14 proceeded around a 90 degree turn in the road. Officer Klosterman
15 activated his siren. The vehicle continued traveling northbound.
16 Officer Klosterman "bumped" his air horn and activated his front
17 strobe lights. At that moment, Defendant gestured with his left
18 arm, out his window, pointing to the parking lot of the Mates
19 Building. No additional effort by law enforcement was needed to make
20 the Defendant pull over. The vehicle continued to the parking lot and
21 pulled into a parking stall.
22

23 Officer Klosterman issued Defendant citations charging him with
24 Speeding 35/25 (RCW 46.61.400), Expired Registration (RCW 46.16.010)
25 and Failure to Obey Police Officer (RCW 46.61.021).
26

1 **Defendant's Motion to Dismiss**

2 At the close of the government's case, Defendant moved to dismiss
3 all three charges pursuant to Fed. R. Crim. P. 29. Defendant argued
4 that there was insufficient evidence to convict Defendant of the three
5 charges and that the government does not have jurisdiction over the
6 speeding and expired registration infractions.

7 The undersigned finds that this Court has jurisdiction over the
8 instant traffic infractions committed on a military installation
9 pursuant to 32 C.F.R. §§ 210.3¹ & 634.25². The Court does not accept
10 the Defendant's argument with regard to notice of the basis for
11 assertion of jurisdiction since the Government expressly waived any
12 request for incarceration in the event the Court found a violation of
13 law. The court further finds that Defendant's Rule 29 motion with
14 respect to the three charges shall be denied.
15

16 **Discussion**

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19 ¹32 C.F.R. § 210.3(b) indicates that "all persons on a military
20 installation shall comply with the vehicular and pedestrian traffic laws
of the state in which the installation is located."

21 ²32 C.F.R. § 634.25(f) provides as follows:

22 In those States where violations of traffic law are not considered
23 criminal offenses and cannot be assimilated under 18 U.S.C., DODD
24 5525.4, enclosure 1 expressly adopts the vehicular and pedestrian
25 traffic laws of such States and makes these laws applicable to
26 military installations having concurrent or exclusive Federal
jurisdiction. . . . Persons found guilty of violating the vehicular
and pedestrian traffic laws made applicable on the installation
under provisions of that directive are subject to a fine as
determined by the local magistrate or imprisonment for not more than
30 days, or both, for each violation. . . .

1 **I. Failure to Obey**

2 The government contends that although Defendant eventually
3 stopped in this case, Defendant violated RCW 46.61.021 by failing to
4 pull over within a reasonable amount of time when signaled by the
5 police officer. Defendant argues he fully complied with the
6 provisions of the Failure to Obey statute, RCW § 46.61.021, by obeying
7 the officer's direction to stop.
8

9 RCW 46.61.021(1) states that "[a]ny person requested or signaled
10 to stop by a law enforcement officer for a traffic infraction has a
11 duty to stop." The penalty statute for failure to obey an officer
12 provides that "[a]ny person who wilfully fails to stop when requested
13 or signaled to do so by a person reasonably identifiable as a law
14 enforcement officer . . . is guilty of a misdemeanor." RCW 46.61.022.
15

16 The evidence presented at trial demonstrates that Defendant did
17 not fail to stop, only that he did not stop "immediately" when
18 signaled by the officer. The arresting officer was not able to tell
19 when the Defendant first saw the lights in the patrol car. Although
20 the Defendant's vehicle traveled approximately one quarter of a mile
21 before pulling over, he testified that he lost sight of the unmarked
22 patrol car after he first noticed that it had pulled in behind him but
23 before recognizing that it was a law enforcement vehicle. Officer
24 Klosterman testified that he followed the Defendant's vehicle for
25 about 9-10 seconds before he "bumped" his horn and activated his
26 strobe lights and the Defendant acknowledged his presence by signaling

1 that he would pull over in the parking lot. At 35 miles per hour, this
2 would result in traveling approximately 51 feet per second. In 10
3 seconds the Defendant would have traveled 510 feet or 170 yards.
4 Further, the Officer ceased using the horn once Defendant signaled
5 that he intended to pull over in the parking lot. Defendant could have
6 reasonably inferred that he had permission to continue on into the
7 parking lot.

8 Based on the evidence submitted, the court is unable to conclude
9 that Defendant responded inappropriately on the morning of April 4,
10 2007. The evidence presented at trial, and upon the Court weighing
11 that evidence, establishes that Defendant, under the totality of the
12 circumstances, responded reasonably when he became aware that a law
13 enforcement officer was requesting that he pull over. Accordingly,
14 the Court finds that the government has not met its burden to
15 establish beyond a reasonable doubt that Defendant violated RCW
16 46.61.021.

18 **II. Speeding and Expired Registration**

19 With respect to the speeding and expired registration
20 infractions, Defendant asserts that the Government failed to produce
21 sufficient admissible evidence of these violations. The court does
22 not agree.

23 RCW 46.61.400 sets forth the basic rule regarding maximum speed
24 limits. RCW 46.16.010 provides that the failure to renew an expired
25 registration before operating a vehicle is a traffic infraction.
26

1 The evidence shows that in the area where Defendant was
2 traveling, the posted speed limit is twenty-five miles per hour and
3 Defendant was driving a vehicle at thirty-five miles per hour, ten
4 miles over the posted speed limit. Defendant acknowledged at trial
5 that he had seen the speed limit sign before. The Court finds that the
6 Defendant knew what the posted speed limit was and, based on the
7 Officer's testimony that the Defendant's vehicle slowed down upon
8 making contact, that he knew he was exceeding the speed limit. Officer
9 Klosterman testified that he had checked the radar unit in his vehicle
10 before starting duty and it was functioning and accurate. There was no
11 offer as to a certificate of compliance that the radar unit passed the
12 requisite checks and tests to ensure its operational accuracy, nor did
13 the Government offer an expert witness to testify as to the same, thus
14 the Court disregards any evidence about the radar readings obtained as
15 being unreliable. City of Bellevue v. Lightfoot, 75 Wn.App. 214, 877
16 P.2d 247 (1994). Nevertheless, Officer Klosterman's training and
17 experience, together with his observations of the Defendant's speed,
18 are enough to persuade the Court that Defendant was speeding.

19
20 Officer Klosterman testified that a check with the Washington
21 Department of Licensing at the time of the traffic stop revealed that
22 Defendant's vehicle registration had expired in 2001.

23 The court finds that, based on the evidence at trial, on the
24 morning of April 4, 2007, Defendant was speeding in violation of RCW
25
26

1 46.61.400 and was driving with an expired vehicle registration in
2 violation of RCW 46.16.010.

3 **Order**

4 Based on the foregoing, the Court **HEREBY RENDERS THE FOLLOWING**
5 **ORDER:**

6 Defendant, Anthony Bosworth, is not guilty of violating RCW
7 46.61.021, Failure to Obey a Police Officer.

8 Defendant, Anthony Bosworth, violated RCW 46.61.400, Speeding
9 35/25.

10 Defendant, Anthony Bosworth, violated RCW 46.16.010, Expired
11 Registration .

12 Defendant, Anthony Bosworth, is ordered to appear for
13 sentencing/mitigation on **February 29, 2008 at 10:30 a.m. in Yakima,**
14 **Washington,** before the Honorable James P. Hutton.

15 **IT IS SO ORDERED.** The District Court Executive is directed to
16 enter this order and to provide copies to all counsel.

17 **DATED** this 8th day of February, 2008.

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19
20 S/James P. Hutton
21 JAMES P. HUTTON
22 UNITED STATES MAGISTRATE JUDGE
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